Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-2068

W. TURTON THOMPSON,

Petitioner

vs.

MEDICAL LICENSING BOARD OF INDIANA AND ERNEST R. BEAVER, JAMES N. HAMPTON, ROBERT R. KOPECKY, JOHN H. MADER, WALTER J. BENEVILLE, BRUCE C. BRINK, AND EDWARD L. HOLLENBERG, INDIVIDUALLY AND AS MEMBERS OF THE MEDICAL LICENSING BOARD OF INDIANA,

Respondents

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS, SECOND DISTRICT

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ARGUMENT

Respondents' "Brief in Opposition to Petition for Writ of Certiorari to the Indiana Court of Appeals, Second District," (hereinafter "Opposition Brief"), raises two points warranting reply. First, the Opposition Brief suggests that a state remains free to apply its own jurisdictional requirements to a cause of action arising under a federal statute, such as 42 U.S.C. § 1983, if that requirement is "not patently offensive to federal due process rights." (Opposition Brief, p. 6) Second, the Opposition Brief claims that this case is governed by *Withrow v. Larkin,*

421 U.S. 35 (1975), and, therefore, does not state a viable claim under § 1983. Neither of these arguments, however, adequately addresses the points made in the petition for writ of certiorari (hereinafter "Petition").

I.

A State Court Must Follow This Court's Rulings Interpreting a Federal Statute

The Opposition Brief fails to acknowledge that the decisions of this Court control the questions presented in this case, which arises under a federal statute, even though the case was filed in state court. Thus, the Opposition Brief cites numerous Indiana decisions generally requiring exhaustion of administrative remedies and ignores the decisions of this Court which have eliminated the exhaustion requirement in § 1983 cases such as this one. The Opposition Brief claims that it may ignore this Court's decisions because a state is allowed to apply its own jurisdictional requirement to a case, regardless of whether that case arises under a federal statute, if the jurisdictional requirement is "not patently offensive to federal due-process rights." It is interesting to note that the Opposition Brief cites no cases supporting that proposition.

The absence of supporting precedent is not surprising, however, because, as shown by the cases cited in the Petition (pp. 12-14), federal law, as interpreted and applied by this Court, must be applied to federal rights arising under federal statutes even when those rights are enforced in state court. The numerous decisions of this Court cited in the Petition (pp. 14-16), particularly *Gibson v. Berryhill*, 411 U.S. 564 (1973), hold that exhaustion of administrative remedies is not required under the circumstances presented in this § 1983 action. The court below chose not to follow this Court's decision, and it is this refusal to acknowledge the primacy of the law developed by this Court which gives rise to the Petition.

This Court has previously held that state practices and procedures, no matter how dearly held, must give way when they are inconsistent with the federal law to be applied in determining federal substantive rights. Typical of these cases are *Dice v. Akron, Canton and Youngstown Railroad Company,* 342 U.S. 359 (1952) and *Brown v. Western Railway of Alabama,* 338 U.S. 294 (1949) in which this Court granted certiorari and reversed two state court determinations in Federal Employees' Liability Act ("FELA") cases.

In both *Dice* and *Brown,* state courts had applied well-established state rules of law to FELA actions.[1] In both cases, this Court granted certiorari to determine whether the state law rule could be applied to a federal cause of action. And in both cases, this Court reversed the decisions of the state court and held that "[s]tate laws are not controlling in determining what the incidents of this federal right shall be." *Dice, supra,* 342 U.S. at 361.

The Petition presents substantial questions of federal law similar to those which have previously led this Court to grant certiorari to review state court decisions. For example, in *Brown, supra,* this Court granted certiorari "because the implications of the dismissal were considered important to a correct and uniform application of the federal act in state and federal courts," 338 U.S. at 295. The dismissal of the complaint here for failure to exhaust administrative remedies presents similar issues regarding the uniform application of § 1983 in state and federal courts. The court below acknowledged, but did not follow, the decisions of this Court which relieve petitioner of the requirement of exhausting state administrative remedies before proceeding under § 1983. Certiorari should be

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[1] In *Brown,* the complaint was dismissed based on a state rule which required the allegations of the complaint to be construed against the plaintiff. In *Dice,* the judge reversed a jury verdict under an Ohio practice which removed certain fraud question from the jury's determination.

granted in this case to insure the uniform application of § 1983 in state and federal courts, and to correct the failure of the Indiana Court of Appeals, Second District, to apply the federal law developed by this Court under that federal statute.

II.

The Complaint's Allegations of Bias Relieve Plaintiff of The Requirement of Exhausting Administrative Remedies

The second part of the Opposition Brief suggests that exhaustion of administrative procedures is required here even though the complaint below alleges bias in the administrative process. The Opposition Brief relies heavily on *Withrow v. Larkin,* 421 U.S. 35 (1975) claiming that the case is "almost indistinguishable from the one at bar" (Opposition Brief, p. 11). This argument ignores, however, the clear language in *Withrow,* cited at pp. 19-20 of the Petition, which requires a lower court to make a careful inquiry into allegations of bias in the administrative process before dismissing a § 1983 action.

The complaint's allegations of bias extend far beyond the mere combination of the investigative-adjudicative function presented in *Withrow.* Here the Complaint alleges, *inter alia,* that information was provided to members of the Medical Licensing Board prior to the scheduled hearing which prejudiced their ability to impartially review the case.[2] No similar allegations appear in *Withrow* thus distinguishing the present case from *Withrow* and precluding dismissal for failure to exhaust administrative remedies prior to judicial investigation into the bias claim contained in the Complaint.

Furthermore, in *Withrow,* which, as here, involved a doctor attempting to restrain a medical licensing board hearing to revoke his license, neither the three-judge court

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[2] Complaint, paragraph 21, page A37 of the Petition.

nor this Court even suggested that Withrow was required to exhaust the licensing board hearing before presenting his due process claim pursuant to § 1983. Whatever *Withrow* might say about the merits of petitioner's claim, it at least supports petitioner's right to have his claim heard on its merits, free from the exhaustion requirement.

Thus, for the reasons stated on pages 16-20 of the Petition, the decision below conflicts with *Gibson, supra,* is distinguishable from *Withrow,* and, therefore, certiorari should be granted to correct the conflict between *Gibson* and the decision below.

Conclusion

For the reasons stated herein, and in the Petition, Petitioner, W. Turton Thompson, prays that a writ of certiorari issue to the Indiana Court of Appeals, Second District, to review the judgment and opinion below.

Respectfully submitted,

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